

FEDERAL COURT

B E T W E E N:

CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

**WRITTEN REPRESENTATIONS OF THE RESPONDENT IN RESPONSE TO
APPLICANTS' MOTION FOR INTERLUCTORY INJUNCTION**

OVERVIEW

1. Now that the declaration of a state of emergency under the *Emergencies Act* has been revoked,¹ this motion is moot and should be dismissed forthwith. Pursuant to [s. 15\(2\)](#) of the *Emergencies Act*, all orders and regulations made pursuant to a declaration are revoked upon revocation of the declaration. This means there is quite simply nothing left to stay on this motion. There is no point in proceeding.

2. Even if the motion was not moot, the Applicants' evidence and arguments on this motion would fall far short of satisfying the very high threshold for staying the operation of duly enacted laws on grounds of alleged unconstitutionality.² While none of the three

¹ *Proclamation Revoking the Declaration of a Public Order Emergency*, [SOR/2022-26](#), February 23, 2022 [Revoking Proclamation].

² *Harper v Canada (Attorney General)*, 2000 SCC 57 at para 9 [Harper]; *Springs of Living Water Centre Inc v The Government of Manitoba*, 2020 MBQB 185 at paras 27-30 [Springs of Living Water].

requirements have been met in this case, the Applicants’ failure to establish non-speculative irreparable harm is the most obvious grounds for dismissing this motion. There is no evidence before the Court of Ms. Nagle’s or the Canadian Frontline Nurses’ (“CFN”) accounts actually having been frozen. Given the revocation of the declaration, there is no longer any basis for any accounts to be frozen under the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*. There is no harm to complain of, let alone irreparable harm.

3. The Applicants’ arguments also fail to demonstrate a serious issue, even on the low “frivolous or vexatious” standard. They certainly do not survive a more extensive examination of the merits, required here because granting the remedy the Applicants seek essentially provides the relief being sought in the underlying (and now moot) application. In cases of public emergency, the balance of convenience also weighs heavily in favour of the government. That is particularly the case when the measures in question were targeted and temporary, and the Applicants have not suffered any harm due to them. This motion for a stay should be dismissed with costs in the cause – given the Applicants’ unreasonable insistence on continuing with their moot motion.

PART I – STATEMENT OF FACTS

A. The *Emergencies Act* Declaration

4. On February 14, 2022, the Governor in Council (“GIC”) issued a proclamation pursuant to s. 17(1) of the *Emergencies Act*,³ declaring that a public order emergency

³ *Emergencies Act*, [RSC, 1985, c 22 \(4th Supp\)](#) [*Emergencies Act*].

existed throughout Canada which necessitated the taking of special temporary measures for dealing with the emergency (“*Emergency Proclamation*”).⁴

5. The public order emergency constituted the continuing blockades by persons and motor vehicles throughout Canada and the continuing threats to oppose measures to remove blockades, including by force, for the purpose of achieving a political or ideological objectives within Canada; the adverse effects on Canada’s economy and threats to its economic security resulting from the impact of blockades of critical infrastructure; the adverse effects resulting from the impact of the blockades on Canada’s relationship with its trading partners; the breakdown in the distribution chain for essential goods, services and resources as a result of the blockades; and the potential for increase in the level of unrest and violence that would further threaten the safety and security of Canadians.⁵

6. Pursuant to s. 19(1) of the *Emergencies Act*, on the recommendation of the Minister of Public Safety and Emergency Preparedness (“Minister”), the GIC made the *Emergency Measures Regulations*,⁶ and the *Emergency Economic Measures Order*.⁷

7. The *Emergency Measures Regulations* included prohibitions on public assembly leading to a breach of peace;⁸ travelling to or within such assembly or to a place where

⁴ *Proclamation Declaring a Public Order Emergency*, [SOR/220-20](#), February 14, 2022 [*Emergency Proclamation*].

⁵ *Emergency Proclamation*, [supra](#).

⁶ *Emergency Measures Regulations*, [SOR/2022-21](#), February 15, 2022 [*Emergency Measures Regulations*].

⁷ *Emergency Economic Measures Order*, [SOR/2022-22](#), February 15, 2022 [*Economic Measures Order*].

⁸ *Emergency Measures Regulations*, [s. 2\(1\)\(a\)-\(c\)](#).

an assembly is reasonably expected to take place;⁹ causing a minor to participate in such assembly;¹⁰ and providing property to or for the benefit of persons participating in or facilitating such an assembly.¹¹ They also included the authority to secure certain designated protected places¹² and a requirement to provide, on the request of the Minister and the Commissioner of the RCMP, the essential goods and services requested for the removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade.¹³

8. The measures in the *Economic Measures Order* included the following:

- a. the requirement that banks and other financial service providers continually determine whether they are in possession or control of property that is owned by a designated person, as defined in s. 1, or by someone acting on their behalf or direction.¹⁴ A “designated person” includes any individual or entity that is engaged, directly or indirectly, in an activity prohibited under sections 2 to 5 of the *Emergency Measures Regulations*;¹⁵
- b. the requirement that banks and other financial service providers disclose the existence of property that they have reason to believe is owned, held or controlled by or on behalf of designated persons and any information about transactions or proposed transactions about such property to the RCMP or CSIS;¹⁶
- c. the requirement that banks and other financial service providers take immediate steps to temporarily restrict access to funds to (or for the benefit of) designated persons; to cease to provide services to (or for the benefit of) any designated person; not to facilitate any transaction relating to funds or virtual currency, and not offer any financial service or provide any funding, including virtual currencies, to designated persons;¹⁷

⁹ *Emergency Measures Regulations*, [s. 4\(1\)](#).

¹⁰ *Emergency Measures Regulations*, [s. 2\(2\)](#).

¹¹ *Emergency Measures Regulations*, [s. 5](#).

¹² *Emergency Measures Regulations*, [s. 6\(a\)-\(f\)](#).

¹³ *Emergency Measures Regulations*, [s. 7\(1\)-\(3\)](#).

¹⁴ *Economic Measures Order*, [s. 3\(a\)-\(l\)](#).

¹⁵ *Economic Measures Order*, [s.1](#)

¹⁶ *Economic Measures Order*, [s.5\(a\)-\(b\)](#).

¹⁷ *Economic Measures Order*, [s. 2\(1\)\(a\)-\(d\)](#).

- d. the authorization for government (federal, provincial or territorial) institutions to disclose information to entities that are subject to the obligation to freeze accounts (cease dealings) where the disclosing institution is satisfied that the disclosure will contribute to the application of the *Economic Measures Order*; ¹⁸
- e. the requirement to register with Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), and report any suspicious and large value transactions to FINTRAC extended to crowdfunding platforms and payment service providers. ¹⁹

9. On February 23, 2022, the GIC issued the *Revoking Proclamation*, which revoked the declaration of a state of emergency under the *Emergencies Act*.²⁰ Pursuant to [s. 15\(2\)](#) of the *Emergencies Act*, all orders and regulations made pursuant to the prior declaration were revoked upon revocation of the declaration.

B. The Applicants’ Evidence on this Motion

10. The Applicant, Kristen Nagle, is a registered nurse, and a director and member of the co-Applicant, the Canadian Frontline Nurses.²¹

11. The Applicants oppose what they view as “unreasonable” Covid-19 mandates and restrictions implemented by the various levels of government.²² Towards that end, the Ms. Nagle claims to have personally participated in the 2022 protest occupation of Ottawa, and to have made speeches and “other peaceful expressions of my opinions, beliefs, and values.”²³

¹⁸ *Economic Measures Order*, [s. 6](#).

¹⁹ *Economic Measures Order*, [s. 4\(1\)-\(3\)](#).

²⁰ *Proclamation Revoking the Declaration of a Public Order Emergency*, [SOR/2022-26](#), February 23, 2022 [*Revoking Proclamation*].

²¹ Affidavit of Kristen Nagle, sworn February 18, 2022, (“Nagle Affidavit”), [Applicants’ Motion Record (“AMR”), p 14]

²² Nagle Affidavit at para 4-5, AMR, p 15.

²³ Nagle Affidavit at para 9, AMR, p 15.

12. The Applicants claim to have property and funds stored in financial institutions.²⁴ However, Ms. Nagle has adduced no evidence to show that she could not access her funds, let alone funds required to secure the necessities of life. Similarly, there is no evidence CFN cannot access its property and funds to support its mission.

13. Ms. Nagle says she wishes to continue her participation in the protest, but cannot “conceive” how she will be able to do so if prevented from receiving direct or indirect support and access to funds held in financial institutions to maintain necessities of life.²⁵ That is the extent of her evidence on this point.

PART II - POINTS IN ISSUE

14. This motion should be dismissed on grounds of mootness, as there is nothing left for the Court to stay. In addition, the Applicants have failed to satisfy any of the three requirements for a stay pending resolution of the underlying application.

PART III – SUBMISSIONS

A. Preliminary objection: Motion is moot & should be dismissed

15. The present stay motion is moot and should be dismissed on this basis. An issue is moot if the tangible and concrete dispute between the parties has disappeared such that the issue has become academic.²⁶

²⁴ *Economic Measures Order*, [s.1](#)

²⁵ Nagle Affidavit, at para 14, AMR, p 16.

²⁶ [Borowski v Canada \(AG\)](#), [1989] 1 SCR 342 [*Borowski*].

16. Following the revocation of the declaration of a state of emergency under the *Emergencies Act*,²⁷ there is no longer any tangible and concrete dispute between the parties. Pursuant to [s. 15\(2\)](#) of the *Emergencies Act*, all orders and regulations made pursuant to a declaration are revoked upon revocation of the declaration. This means there is quite simply nothing left to stay on this motion.

17. There is also no point in proceeding on discretionary grounds. The *Borowski* considerations do not favour the court exercising its discretion to hear this moot motion. Those criteria include: a) the absence or presence of an adversarial context; b) whether there is any practical utility in deciding the matter or if it is a waste of judicial resources; and c) whether the court would be exceeding its proper role by making law in the abstract, a task reserved for Parliament.²⁸

18. Here, there is no adversarial context other than what might be described as residual antipathy. There are no Emergency provisions left that the Applicants might become subject to. There is nothing left to stay, and thus no practical utility in proceeding. Given the existence of both a parliamentary review and the inquiry required by the *Emergencies Act*,²⁹ and the absence of any basis for granting a stay to the applicants, the Court would be exceeding its proper role by proceeding at this time. As the Court of Appeal recently held, “gratuitously interpreting the former wording of a provision in

²⁷ *Proclamation Revoking the Declaration of a Public Order Emergency*, [SOR/2022-26](#), February 23, 2022 [Revoking Proclamation].

²⁸ *Amgen Canada Inc. v Apotex Inc.*, 2016 FCA 196 [Amgen], at para [16](#) citing *Borowski*.

²⁹ See ss. [62\(6\)](#) and [63](#) of the *Emergencies Act*.

issue, in a case with no practical consequences, just to create a legal precedent, would be a form of law-making for the sake of law-making. That is not our proper task.”³⁰

19. This moot motion should be dismissed.

B. The three-part test for granting a stay

20. An interlocutory injunction is an exceptional remedy. The onus that an applicant must meet to obtain an injunction against the enforcement of a law on grounds of alleged unconstitutionality is extremely high. A Court should only grant an interlocutory injunction in the clearest of cases.³¹ For the Applicants to obtain an injunction, this Court must be satisfied that a) there is a serious issue to be tried, b) the Applicants would suffer irreparable harm if the injunction is not granted; and c) the balance of convenience favours granting the injunction.³² The Applicants’ motion fails to meet any of these conjunctive criteria.

C. Irreparable Harm Not Established

21. The Applicants’ evidence and arguments fall far short of establishing irreparable harm. The exceptional remedy of an injunction will not be granted absent serious misconduct or grave loss, that is, irreparable harm.³³ Irreparable harm is generally categorized as harm that cannot be remedied by an award of damages, and refers to the

³⁰ [*Canadian Union of Public Employees \(Air Canada Component\) v Air Canada*](#), 2021 FCA 67 at para 13.

³¹ [*Harper*](#) at para 9; [*Springs of Living Water*](#) at paras 20, 28.

³² [*RJR MacDonald Inc v Canada \(Attorney General\)*](#), [1994] 1 SCR 311 at 334 [*RJR MacDonald*]; [*Google Inc v Equustek Solutions Inc*](#), 2017 SCC 34 at para 1.

³³ [*ADT Security Services Canada, Inc v Fluent Home Ltd*](#), 2019 ONSC 2804 at para 71.

“nature of the harm suffered rather than the magnitude”.³⁴ It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other”.³⁵

22. The irreparable harm threshold is not lower in *Charter* cases. Irreparable harm does not automatically flow, nor can it be inferred from, a potential *Charter* breach that has yet to be determined.³⁶ The party seeking the stay must adduce clear and non-speculative evidence that irreparable harm will follow if the motion for a stay is denied. It is not sufficient to demonstrate that irreparable harm is "likely" to be suffered.³⁷ General assertions cannot establish irreparable harm. The Applicant must demonstrate in a detailed and concrete way that they will suffer real, definite, unavoidable harm between now and the resolution of the underlying application³⁸ that cannot be repaired later. As the Court of Appeal held in *Glooscap Heritage Society*:

To establish irreparable harm, there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted. Assumptions, speculations, hypotheticals and arguable assertions, unsupported by evidence, carry no weight.³⁹

³⁴ [Canadian Council for Refugees v Canada](#), 2008 FCA 40 at para 23.

³⁵ [AstraZeneca Canada Inc v Apotex Inc](#), 2011 FC 505 at para 56, affirmed [2011 FCA 211](#), citing [RJR MacDonald](#) at 341.

³⁶ [Solomon v Garden River First Nation](#), 2018 FC 1284 at para 38, citing [Right to Life Association of Toronto and Area v Canada \(Minister of Employment, Workforce and Labour\)](#), 2018 FC 102 at para 60.

³⁷ [United States Steel Corporation v Canada \(Attorney General\)](#), 2010 FCA 200 at para 7.

³⁸ [Lake Petticodiatic Preservation Assn Inc v Canada \(Minister of the Environment\)](#) (1998), 149 FTR 218 at para 23.

³⁹ [Glooscap Heritage Society v Minister of National Revenue](#), 2012 FCA 255 at para 31; see also, [Gateway City Church v Canada \(National Revenue\)](#), 2013 FCA 126 at para 15.

23. There is no evidence that the applicant's accounts have been frozen nor any evidence that they will be. Ms. Nagle's affidavit refers to unnamed "participants" in the "Freedom Convoy 2022" who told her that their bank accounts were frozen after the *Emergencies Act* was invoked. Aside from being unreliable hearsay, this assertion does not even establish a causal connection between the measures taken under the *Emergencies Act* and an individual being unable to access their account. An obvious alternative could be that such accounts were frozen due to the *Mareva* Order of Justice C. MacLeod issued on February 17, 2022.⁴⁰

24. The harm the applicants seek to avoid by this motion is entirely speculative. The applicants seek to stay the *Emergency Measures Regulations* because they believe it is possible that the accounts of CFN or Ms. Nagle may be frozen due to the undisclosed manner they chose (or may choose) to engage in political protest. There is no evidence the applicants were ever designated persons under the *Emergency Measures Regulations*. Ms. Nagle's evidence vaguely refers to peaceful participation in the "Freedom Convoy 2022" in the form of speeches and expressions of opinion. Aside from a reference to "Ottawa," there is no indication of where such speeches were made or any other circumstances which establish Ms. Nagle has been clearly impacted by the regulations and order under the *Emergencies Act* (which have now been revoked in any event). The evidence is equally vague in terms of future intentions.

25. The applicants have not adequately described any actions that could have resulted in them being designated under the *Emergency Measures Regulations*. As such the

⁴⁰ *Zexi Li et al v Chris Barter et al*, [Order dated February 7, 2022](#), CV-22-00088514-00CP (Ont. SCJ), Macleod J.

applicants have entirely failed to establish the factual basis for the motion. It is not possible to establish irreparable harm in such an evidentiary vacuum.

26. Even if it were assumed, however, that the applicants did engage in activity which could have resulted in either of them being designated under the *Emergency Measures Regulations*, the alleged harm would have been avoidable.

27. There is no evidence to suggest Ms. Nagel could not have withdrawn or borrowed sufficient funds to ensure she could maintain her chosen lifestyle, let alone survive. There is no evidence that she was unable to make any other arrangements to ensure adequate funds were available to allow her to express herself and maintain her health. Similarly, there is no evidence to support a conclusion that CFN could not have made arrangements to ensure its continued functioning. Ms. Nagle's statement that she "cannot conceive" of how she would be able to express herself or maintain her life if her accounts were frozen is woefully insufficient to establish irreparable harm.

28. As such, even if the concerns the applicants raised were not moot and speculative, the imagined harm was avoidable and, consequently, not irreparable.

d. No serious issue - Merits of Applicants' case insufficient to warrant injunction

29. The Applicants have also failed to establish a serious issue to be tried. Typically, the standard is low, requiring only that the claim must not be frivolous or vexatious. However, in cases such as this, where the injunction motion seeks the same remedy or would achieve the remedy sought in the underlying application, the serious issue prong of the *RJR MacDonald* test will be applied more rigorously. In such cases, the Court must undertake a more extensive review of the merits and be satisfied that the application is

likely to prevail.⁴¹ The Applicants have not established a likelihood of success on this application.

1) The Proclamation is not *ultra vires* the Act

30. The Applicants argue that the *Emergency Proclamation* is *ultra vires* the *Act*, because there are no reasonable grounds to establish a public order emergency based on the existence of threats to the security of Canada. Section 16 of the *Act* describes a “public order emergency” as “ an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.”⁴²

31. The opinion evidence of Ms. Nagle, that the protests have been peaceful, is inadequate to support the claim that there is no threat to the security of Canada. Ms. Nagle’s brief evidence is without detail, anecdotal and impressionistic amounting only to an assertion that the activities she witnessed did not seem violent to her. Nowhere in her affidavit does she rebut the state of affairs that are outlined in the *Emergency Proclamation* as constituting a public order emergency.

32. Ms. Nagle’s evidence does not challenge the existence of a blockade, or the threats to oppose measures to remove blockades, including by force. She also does not provide evidence to rebut the damage to Canada’s economy and relationship with its trading partners resulting from blockades, or the breakdown in the distribution chain.

⁴¹ [RJR MacDonald](#) at 338; [Monsanto v Canada \(Health\)](#), 2020 FC 1053 at paras 44, 50-56 [*Monsanto*].

⁴² *Emergencies Act*, [s. 16](#).

33. These facts amply support a strong *prima facie* case that there exist “threats to the security of Canada,” as defined under the *Canadian Security Intelligence Services Act*.⁴³ The extent if Ms. Nagle’s evidence – that what she saw seemed peaceful to her – does not provide any basis for challenging the grounds provided by the GIC in support the *Emergency Proclamation*.

34. The Applicants also argue that the *Emergency Proclamation* is outside the scope of s. 3 of the *Emergencies Act*, which requires that the emergency “exceed the capacity or authority of a province to deal with it” and “that cannot be effectively dealt with under any other law.”⁴⁴

35. Again, the Applicants have adduced no evidence to establish that the provinces were capable of responding to the protests.

36. At paragraphs 10, 40, 45 the Applicants' argument on this issue proceeds on the basis of factual assertions without reference to any evidence. These matters are not uncontroversial and involve opinion or interpretation. They are not amenable to judicial notice. The threshold for serious issue must be established on the basis of evidence before the Court.

37. The Applicants outline a litany of federal and provincial laws that they argue are sufficient to deal with the public order emergency. They do not elaborate how these laws provide appropriate alternatives to the measures included in the *Emergency*

⁴³ *Canadian Security Intelligence Services Act*, RSC, 1985, c C-23, s. 2.

⁴⁴ *Emergencies Act*, [s. 3\(a\)-\(b\)](#)

Proclamation, the *Emergency Regulations*, and the *Economic Measures Order*. Nor do they offer any factual evidence of their effectiveness. There is no serious issue here.

2) No serious issue of abrogation, abridgment, or infringement of *Bill of Rights*

38. The Applicants assert an infringement of their property rights under the *Canadian Bill of Rights*,⁴⁵ on the basis that they are “presumptively ‘designated persons’”,⁴⁶ pursuant to s. 1 of the *Economic Measures Order*.

39. Beyond this argument being moot, the Applicants could not be presumed to be “designated persons,” as defined by the *Economic Measures Order*. In order for them to come within this definition, they would have to establish that they were an individual or an entity engaged in prohibited outlined in sections 2 to 5 of the *Emergency Measures Regulations*.⁴⁷

40. The Applicants have adduced insufficient evidence to establish that they were engaged in a public assembly leading to a breach of peace; or that they caused a minor to participate in such an assembly; or that they travelled or caused a minor to travel within an area; or that they were foreign nationals trying to enter Canada to participate in an unlawful assembly; or that they improperly used property in a prohibited assembly. A vague reference to making speeches in Ottawa is not enough to presume anything.

41. The Applicants also have not demonstrated that *a temporary inability to access funds from an entity* (which could have been ended upon cessation of the prohibited

⁴⁵ *Canadian Bill of Rights*, SC 1960, c 44 [*Bill of Rights*].

⁴⁶ Applicants Memorandum of Fact and Law, at paras 17, 54, 59, 60.

⁴⁷ *Economic Measures Order*, [s.1](#)

activity) constituted deprivation of an enjoyment of property as these concepts were understood in 1960.

42. In any event, the *Emergency Management Regulations* and the *Economic Measures Order* do not deprive or authorize a deprivation of an enjoyment or property, as provided under s. 1(a) of the *Bill of Rights*. Rather, they require entities to take measures that may have effects on an enjoyment of property. They do not preclude entities from instituting any process that may be appropriate for determining whether the factual preconditions of the measures are satisfied. Section 3 also requires financial entities to determine *on a continuing basis* whether they are in control of property owned, held, or controlled by a designated person, which builds an additional safeguard.

43. The Applicants assert freedoms to engage in activities that are outside the scope of the freedom of speech under s. 1(e) and the freedom of assembly and association under s. 1(f) of the *Bill of Rights* as recognized and declared in 1960. Public demonstrations or the right to hold public meetings on a highway do not come within the scope of these freedoms in the *Bill*.⁴⁸

44. The Applicants incorrectly argue that the rights and freedoms in the *Bill* are not subject to limitations. Although the *Bill* does not include an analogue to s. 1 of the *Charter*, the existence of limits is implied by the recognition and declaration of rights and freedoms as they existed in 1960.⁴⁹

⁴⁸ *Canada (Attorney General) v Montreal (City)*, [1978] 2 S.C.R. 770, at 797.

⁴⁹ *Robertson and Rosetanni v The Queen*, [1963] SCR 651

3) No serious issue of a *Charter* infringement

45. The Applicants assert that prohibitions contained in ss. 2-5 of the *Emergency Management Regulations* infringed freedom of expression under s. 2(b) of the *Charter*, freedom of peaceful assembly under s. 2(c) of the *Charter*, and freedom of association under 2(d) of the *Charter*.

46. Freedom of expression and the freedom of assembly do not protect activities that are violent or threaten violence and activities that predominantly consist in physical force to achieve their aims.⁵⁰ Obstruction of roadways is not a protected form of expression.⁵¹ Thus, paragraphs 2(1)(a)-(c) of the *Emergency Management Regulations* are excluded from these protections.

47. Expression that causes serious disruption to others may be justifiably restricted.⁵² Participation in assemblies that can reasonably be expected to cause disruption to critical infrastructure, or travelling to such assemblies is justifiably restricted as a precaution in light of an elevated risk of the formation of entrenched and intransigent blockades, especially in exceptional circumstances and given the time-limited nature of the restriction.

48. Similarly, there is no viable claim under s. 7 of the *Charter* for violation of procedural rights in respect of s. 10 of the *Emergency Management Regulations*. Section 10(2) contemplates prosecution by way of summary conviction or indictment, where the

⁵⁰ [*Irwin Toy Ltd v Quebec \(Attorney General\)*](#), [1989] 1 SCR 927, at para 42; *R. v Lecompte*, 2000 CanLII 8782 (QCCA), at paras 16-17.

⁵¹ *MacMillan Bloedel Ltd. v Simpson et al and Baker et al*, 1994 CanLII 1731, at para 38.

⁵² *Montreal (City) v 2952-1366 Quebec Inc.*, [2005] 3 S.C.R. 141, at para 60; *R v Banks et al*, 2007 ONCA 19, at paras 129, 131, 132

accused would be afforded the procedural protections under criminal law. In addition, the unspecified prohibitions of the *Emergency Management Regulations* challenged by the Applicants are not overbroad, because they only restrict certain forms of assembly. The Applicants could have complied with the law and also exercised their right to protest.

49. Lastly, s. 8 of the *Charter* is not at play on this application. The essence of the term “seizure” under s. 8 is the “taking of a thing from a person by a public authority without that person’s consent.”⁵³ There is no evidence of state conduct that could have constituted a seizure here; hypothetical concerns of potential seizures do not engage s. 8.

50. There is no serious issue raised by any of the Applicants’ moot and hypothetical arguments.

E. Balance of convenience strongly favours the Respondent

51. The balance of convenience also strongly favours the Respondent in the circumstances of this case.⁵⁴

52. Even if this litigation had not been rendered moot by the *Revoking Proclamation*, there would be a strong public interest in maintaining the integrity of the *Emergency Proclamation*, *Emergency Measures Regulations* and the *Emergency Economic Measures Order*. In constitutional cases, public interest is a “special factor” that weighs “very heavily” in assessing balance of convenience. As a starting point, the Court must assume that laws enacted by democratically elected governments are enacted for the

⁵³ *R v Law*, 2002 SCC 10, at para 15.

⁵⁴ [CCF](#) at para 65.

public good and serve a valid purpose. The invocation of the *Emergencies Act* and the steps taken pursuant to that invocation were confirmed by the House of Commons in accordance with the oversight safeguarding provisions.⁵⁵ Where, as here, the government is charged with the duty of protecting the public, and the measures at issue are undertaken pursuant to that responsibility, the Court should assume that irreparable harm to the public interest would result from the restraint of the measures.⁵⁶

53. To displace the presumption in favour of upholding the operation the measures taken pursuant to the *Emergencies Act*, the Applicants would have to demonstrate that granting an injunction would serve the greater public good. The Applicants have not met this “very high” onus.⁵⁷ As the Justice Little opined in the *Monsanto* interlocutory injunction case:

In that context, it is my view that the harm to the public interest is not to be measured principally in this case by assessing the extent of the risk that the applicant will infect another person, based on his evidence that he is cautious and has always taken precautions to protect himself and others from COVID-19. Rather, it must be measured with reference to the broader public interest at stake [...].⁵⁸

54. The potential for being listed as a designated person only arose in relation to a specifically enumerated set of circumstances. These circumstances were directly tied to the illegal and most damaging aspects of the recent blockades and protests. The applicants were not prevented from exercising free speech or supporting those who were doing the

⁵⁵ *Emergencies Act*, [ss. 7](#) and [58](#) and House of Commons, *Journals*, [No. 36](#), Monday, February 21, 2022 (44th Parl, 1st Sess).

⁵⁶ [RJR McDonald](#) at 343, 346, 348-49; [Harper](#) at para 9; [Springs of Living Water](#) at para 27.

⁵⁷ [Springs of Living Water](#) at paras 27-30.

⁵⁸ *Monsanto* at para [113](#) [underlining added].

same. The proscriptions were related to participation in and support of specific public assemblies as described in s. 2(1) of the *Emergency Measures Regulations*, i.e.:

2(1) A person must not participate in a public assembly that may reasonably be expected to lead to a breach of the peace by: (a) the serious disruption of the movement of persons or goods or the serious interference with trade; (b) the interference with the functioning of critical infrastructure; or (c) the support of the threat or use of acts of serious violence against persons or property.

55. There is no longer any potential for accounts to be frozen as the *Emergency Measures Regulations* have been revoked by operation of law. Even prior to this, on February 22, 2022, the Deputy Prime Minister confirmed that the RCMP had asked financial institutions to unfreeze accounts frozen pursuant to the *Emergencies Act* order. A day earlier, the Assistant Deputy Minister of Finance advised the Standing Committee on Finance that the *Emergencies Act* orders to freeze bank accounts of people who organized, participated in, or donated to the “Freedom Convoy” blockades had been halted. She also confirmed that the RCMP was working with financial institutions to unfreeze those accounts.⁵⁹

56. The balance of convenience strongly favours dismissing this stay.⁶⁰

PART IV - ORDER SOUGHT

57. The Respondent seeks an Order dismissing the Applicants’ motion with costs, given the unreasonableness of proceeding with this motion despite its mootness.

⁵⁹ Tonda MacCharles, *Toronto Star*, “[RCMP working to ‘unfreeze’ protestors’ bank accounts, Ottawa says](#),” February 22, 2022.

⁶⁰ [CCF](#) at para 69.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at the City of Toronto, in the province of Ontario, this 24th day of February 2022.

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FEDERAL COURT

B E T W E E N:

**CANADIAN FRONTLINE NURSES
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**WRITTEN REPRESENTATIONS OF
THE RESPONDENT IN RESPONSE
TO APPLICANTS' MOTION FOR
INTERLUCTORY INJUNCTION**

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